



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

**2011 SESSION  
POSITION PAPER**

**BILL NO:** SB 808 / HB 782

**COMMITTEE:** Education, Health and Environmental Affairs /  
Health and Government Operations

**POSITION:** Oppose

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**TITLE:** Health Occupations - Imaging and Radiation Therapy Services - Accreditation

**BILL ANALYSIS:** This bill amends the statute banning self-referral for health care services to an entity in which a provider has a beneficial interest. It permits self-referral for CT, MRI, and radiation therapy for accredited programs so long as certain basic conditions are met.

**POSITION AND RATIONALE:** The Department opposes SB 808 / HB 782 as written.

Maryland's self-referral law, enacted in 1993, aims to protect against overutilization and overpayment, while preserving access to needed services. There is ample reason for concern that self referral drives up cost without improving quality.

- The Medicare Payment Advisory Committee, upon review of Medicare claims data, concluded that: 1) self-referring physicians conduct a higher proportion of imaging services referrals than non self-referring physicians; and 2) self-referring physicians have a higher ratio of observed-to expected imaging spending than with non self-referring physicians.<sup>1</sup>
- MedPAC further reported that between 2002 and 2007, the volume per beneficiary of imaging services paid under Medicare's physician fee schedule grew nearly twice as fast as all physician services.
- A recent series of articles in the December 2010 issue of *Health Affairs* has also found increased cost but no increase in quality associated with self-referral of radiological tests.

Over the past five years, the Department's Medicaid program has made a series of painful budget cuts. These cuts have been difficult for providers and state residents alike. Similarly, the rising cost

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<sup>1</sup> MedPAC, *Report to Congress: Improving Incentives in the Medicare Program*, June 2009.

of health care is a major challenge facing businesses in the state. Medicaid and other payers simply cannot absorb the financial burden of paying for services that are not needed. In addition, exposure to unnecessary tests is inconvenient and, in the case of ionizing CT scans or radiation therapy, potentially harmful to patients.

The bill replaces the self-referral prohibition with accreditation. The Department is not aware of evidence indicating that accreditation successfully addresses the over-utilization associated with self-referral. Nor is the Department aware that posting alternative locations for services addresses the problems associated with self-referral.

Proponents of this legislation note that there may be scenarios in which self-referral advances health or lowers cost. In fact, at its most recent meeting in February 2011, MedPAC is also considering such scenarios. These could include:

- In a geographic area of scarce resources, the capacity in the physicians' practice is needed to serve the public; or
- The structure of payment addresses the incentive for over-utilization.

The existing law permits the Secretary to grant waivers from the self-referral law under criteria adopted by regulation. However, these criteria are generally linked to access. The Department will explore the proper scope of waivers that may be available under the current law. The Department is also open to legislation that would establish additional standards and processes for appropriate waivers and would be willing to participate in a workgroup with physicians and insurers to accomplish this task.

We believe such a considered approach to waivers is consistent with the most recent MedPAC thinking. We understand that CareFirst, as a major insurer in the state, is also in favor of this approach, which would facilitate an appropriate balance of considerations involved in self-referral.

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